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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 26, 2001

Captain Billy Brown
Lake City Police Department
P.O. Box 1329
Lake City, South Carolina 29560

Re: Your Letter of November 17, 2000
Larceny-Property Subject to Lien

Dear Captain Brown:

Through your letter, you seek this Office's "advice and opinion" on legal options available to law enforcement when an owner of certain property removes that property from the possession of another who holds some type of mechanic's, artisan's or repairman's lien thereon. By way of background, you present the following scenario:

> A subject leaves a vehicle at a local garage for repair. Once the vehicle was repaired, the technician prepares the bill and parks the vehicle. The customer disputes the validity of the bill, refuses to pay, and then gets into the vehicle and drives away. The business owner/manager advises the customer not to take the vehicle without payment, but is unable to prevent this person from entering the vehicle without use of physical force.
>
> The business owner calls the police and a patrolman subsequently arrives and writes a field incident report describing what took place. An investigator receives the case file the following day. Unsure of how to handle the situation, the investigator seeks advice from the city judge. After thorough review, the judge is not able to find within the South Carolina Codes a basis on which to issue a criminal warrant for the incident.

You indicate that you "have been able to find grounds for prosecution of theft of cable television services, theft of electricity, theft of water from public systems, as well as a variety of larceny laws. However, the only information [you] have been able to locate concerning *mechanics liens* indicate that they are only subject to civil suit." You further indicate frustration in the apparent inapplicability of our criminal laws to the situations you describe.

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Request Form.

First, as your city judge has determined, there is not specific statutory law in the South Carolina Code criminalizing the unauthorized removal by the owner of an automobile on which there exists some type of lien. This, however, does not necessarily end our inquiry. Depending on the specific facts, other general common law or statutory law may be applicable.

In South Carolina, larceny is not defined by statute.[1] Rather, South Carolina continues to rely on the common law definition of larceny as the felonious or trespassory taking (without proper authorization) and carrying away of the property of another with the intent to steal. McAninch and Fairey, **THE CRIMINAL LAW OF SOUTH CAROLINA** (3d ed. 1996) (hereinafter **"McAninch"**); citing State v. Sweat, 221 S.C. 270, 70 S.E. 2d 234 (1952). To support a charge or conviction for larceny, the property taken must be that of another. State v. Jackson, 315 S.C. 219, 315 S.E.2d 19 (S.C. Ct.App.1993) (As a general proposition, a person cannot steal his own property). However, "[e]ven though one may have title to the property in question, he commits larceny if he wrongfully deprives another of possession." **McAninch** at 255; citing Henry v. State, 110 Ga. 750, 36 S.E. 55 (1900). A common example of a situation where an owner holding title to property could be held criminally liable for larceny "*would involve an owner's taking without authorization his property from one with a mechanic's lien.*" State v. Jackson, supra . See also **McAninch** at 255.

Accordingly, it is my reading of the law that a charge of larceny (petit or grand depending on the value of the property) is not precluded in the situation you describe simply because a person may have title to the property in question. If the "taking" is done without authorization and the other elements of larceny are present, including the necessary *mens rea* (guilty mind), a criminal charge of larceny may be appropriately lodged against a person having title to an automobile who, without consent, deprives a repairman with a lien of possession of that automobile. See, State v. Marsala, 59 Conn.App. 135, 755 A.2d 965 (Conn. 2000)(Defendant guilty of larceny after removing vehicle from repair shop with lien); and, State v. Pike, 118 Wash.2d 585, 826 P.2d 152 (Wash.1992)(Theft can occur when owner takes property from another who has lien).

In your letter, you also set forth certain "points" that you would like to have addressed "when [this Office is] forming [its] reply." Paraphrased, your "points" are as follows: (1) are the circumstances of the case changed by the addition of "material" to the automobile, as opposed to mere service; (2) would the area where the automobile is located when removed, either a common parking lot or a fenced area, make a difference in the case; (3) would the fact that the keys are left in the automobile and the automobile has been left in a "pick up" area for the customer be relevant to the case; (4) would the time at which the automobile is removed, either during business hours or after hours, make a difference in the case; (5) does it matter whether the owner or his designee or agent requested the repairs; (6) is it relevant that the customer disputes the bill because of a

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[1] §16-13-30 does not define larceny, but rather establishes a three tiered punishment schedule based on the value of the goods taken

perception that the repair was necessitated by previous repairs performed by the business; (7) can the owner be forced to return the automobile until payment is made; and, (8) can prosecution be carried out after payment has been made by the owner to satisfy the existing debt ("or is prosecution limited only to payment OR prosecution?").

Your points, particularly those numbered (1) through (5), amount to factual distinctions which must be considered in determining whether a particular situation warrants criminal charges. Each point, along with any other relevant facts, should be considered by law enforcement when determining whether to pursue a warrant, the magistrate or municipal judge in determining whether to issue a warrant and a solicitor in making prosecution decisions. Whether an owner can be forced to return an automobile until the debt is satisfied depends on the manner in which possession of the vehicle was obtained by the owner. Voluntary relinquishment of possession to the owner extinguishes any mechanic's lien that may be on the property. Welcome Home Center, Inc. v. Central Chev. Co., Inc., 272 S.C. 166, 249 S.E.2d 896 (1978). However, removal of the automobile from the repairman's place of business without consent entitles the repairman to have the automobile restored to his possession for the purpose of enforcing his lien. Bouknight v. Headden, 188 S.C. 300, 199 S.E. 315 (1938).[2] As to point (8), while an owner's payment of the obligation is certainly a factor to be considered in making a prosecution decision, I would caution against conditioning prosecution on payment of such a debt. Such action has long been held to violate public policy. Baker v. Hornik, et al., 57 S.C. 213, 35 S.E. 524 (1900); See also, Whitlock v. Creswell, 190 S.C. 314, 2 S.E.2d 838 (1939).

In conclusion, I would suggest that you seek advice directly from your local Solicitor's Office with regard to charging decisions in these and any other cases in which you have questions.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General

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[2] Return of the automobile could be sought by the repairman through a civil action such as one for "claim and delivery" pursuant to SC Code Ann. §22-3-1310 *et seq.*